IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3792 OF 1993

Smt. S.S. Honnalli Indian Inhabitant, Hindu, Adult, R/a.Near Kannada School, Gaondevi, Temple, Ambernath, Dist.Thane.	.. Petitioner.
V/s.	
1. State of Maharashtra 2. Administrative Officer, Ambernath Municipal Corporation, School Board, Ambernath, Dist. Thane. 3. Shri H.R.Chalvadi, Asstt.Teacher, C/o. Near Kannadas School, Gaondevi Temple, Kuntavalli, Ambernath Dist. Thane.	.. Respondents.

Mr.R.S. Apte with Mr.R.S. Thakur for the Petitioner.

Mr.V.A.Sonpal, AGP for the Respondent No.1.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 28th JUNE, 2007.

ORAL JUDGMENT : (Per F.I.Rebello, J).

. The petitioner was a teacher employed in a Kannad, Primary School run by Ambernath Municipal Corporation, School Board, Ambernath. Shri C.E.Kalia Gaunda and Smt. P.R.Jaiprakash came to be appointed as

Headmaster and Headmistress, respectively, of the two schools. They retired on 31.5.1992. The petitioner had joined the school on 3.10.1961. Whereas the respondent No.3 has joined the school on 6.9.1974. One of the vacancies of the Headmaster/Headmistress was filled in by appointing one H.B.Punda, who belong to other backward class community. Though the petitioner was senior, the respondent No.3 came to be appointed as Headmaster instead of the petitioner therein. It is the case of the petitioner that there were two posts of headmaster/headmistress. Both the two posts could not have been filled in by reserved candidates as that would go against the constitutional mandate of the reservation been not more than 50%.

2. An affidavit came to be filed on behalf of the School Board by one Anandrao G. Shinde. It is admitted that Shri H.B.Punda was appointed to one of the posts and the respondent No.3 to the other post.

3. An affidavit also came to be filed by Respondent No.3. It was his contention that as he belongs to S.C., he was entitled to be considered to one of the two posts.

4. An additional affidavit has been filed by Shri

A.S.Suryavanshi, on behalf of the Municipal School Board. It is set out therein that there are two schools of Kannad Medium. In the affidavit filed on behalf of the State Government it is set out that the appointment of the respondent No.3 was done pursuant to the direction of the Commissioner dated 4.9.1992 and that was done as there was backlog.

5. The issue is whether when out of two posts, one post was filled in by candidate belonging to the backward class as can be seen from the seniority list annexed to the petition, whether it was open to the respondent No.2 to appoint the respondent No.3. Reservation has to be based on the number of posts. One post is already occupied by a backward class candidates. The Respondents then had to proceed based on the seniority. Admittedly the petitioner was senior to the Respondent No.3. There was no question of backlog in the posts of Headmaster of Kannad Primary School and consequently, the appointment of the respondent No.3 was clearly arbitrary. In the meantime, however, the petitioner has retired and considering the above, this petition can be disposed of by issuing the following direction.

i. The respondents are directed to treat the

petitioner as duly appointed to the post of Headmistress from the date the respondent No.3 was appointed. Consequently, the appointment of Respondent No.3 is set aside.

ii. The respondents Nos. 1 and 2 to release the annual increments of the petitioner and accordingly, fix her pay on the date of retirement.

iii. The Respondents not to pay any back wages.

iv. However, petitioner’s pension to be fixed based on the payscale as revised and the arrears of pension to be paid accordingly.

v. The entire exercise to be completed within six months.

. Rule is made absolute with no order as to costs.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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